

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  DAKOTA ACCESS, LLC	  DOCKET NO. HLP-2014-0001
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**ORDER REGARDING INSURANCE POLICIES**

(Issued February 18, 2019)

**BACKGROUND**

On March 10, 2016, the Utilities Board (Board) issued its “Final Decision and Order” in this docket, granting a hazardous liquid pipeline permit to Dakota Access, LLC (Dakota Access), pursuant to Iowa Code chapter 479B. Among other conditions, the order required Dakota Access to maintain at least \$25,000,000 in general liability insurance at all times while the pipeline is operational. Dakota Access filed its initial insurance policies on March 16, 2016.

On August 16, 2018, Dakota Access filed a letter and certificate of insurance regarding its policies effective August 15, 2018, through August 15, 2019. Dakota Access stated these new policies are consistent with the Board’s March 10, 2016 “Final Decision and Order” in this docket and provide an aggregate coverage of \$50,100,000 in liability insurance.

On September 11, 2018, the Board issued an order seeking additional information and clarification regarding Dakota Access’ required insurance policies. On September 21, 2018, Dakota Access filed its response to that order. In its

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response, Dakota Access stated that the Board found the initial policies filed on March 16, 2016, met the Board's requirements, and that the current policies continue to satisfy the Board's requirements. Dakota Access also stated that it typically takes 30 to 60 days to receive fully-executed versions of the policies.

On October 2, 2018, the Northwest Iowa Landowners Association (NILA) filed comments arguing that Dakota Access' insurance policies did not comply with the "Final Decision and Order" in this docket. NILA argues the Board should require Dakota Access to have insurance policies that apply only to claims in Iowa. On October 3, 2018, Sierra Club also filed comments arguing that Dakota Access should have an insurance policy that applies only to Iowa because the Board only has jurisdiction over Iowa.

On October 16, 2018, the Board issued an order regarding Dakota Access' insurance policies. On November 27, 2018, Dakota Access responded to the Board's order, arguing that the Board's requirements go beyond what is statutorily required and what was required by the Board's "Final Decision and Order." Dakota Access nevertheless stated that it had discussed the issue with its insurance brokers and could obtain a separate policy covering an incident arising within the borders of Iowa. If it did so, the new policies would total \$25,100,000 in coverage for Iowa while excluding Iowa from the initial \$25,100,000 in coverage under the existing policies.

On December 28, 2018, the Board issued an order requiring Dakota Access to file its current insurance policies and to provide further information about the proposed Iowa-only policies and the multistate policies currently in place. Dakota

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Access filed its current policies on January 4, 2019. On January 7, 2019, Sierra Club filed a response asking the Board to revoke Dakota Access' permit because it believes Dakota Access has not complied with the Board's orders regarding the insurance policies.

On January 11, 2019, Dakota Access filed additional information in response to the Board's order dated December 28, 2018, and Sierra Club's response. Dakota Access states that in order to obtain an Iowa-only policy, it would need to purchase a policy covering the entire pipeline, then restrict the policy to Iowa. The effect of this restriction would be to limit coverage to incidents that occur in Iowa and damage Iowa property. Dakota Access states this would mean an incident that occurs in another state but impacted Iowa property would not be covered. Dakota Access contrasts this with the current policies, which cover incidents occurring anywhere on the pipeline without regard to state borders.

Dakota Access further states that its current policies provide \$50,100,000 in coverage but the company is only obligated to maintain \$25,000,000 by the Board's "Final Decision and Order." Dakota Access asserts that if it were required to purchase an Iowa-only policy, there would be no regulatory need to maintain the additional \$25,000,000 layer. Dakota Access further clarifies that the limits for both the existing policies and the potential Iowa-only policies are both "per occurrence" and "aggregate claim" limits for the term of the policies. Dakota Access explains the only difference in endorsements and exclusions between the current and potential

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Iowa-only policies would be the restriction in the Iowa-only policy to only cover incidents arising in Iowa.

Dakota Access argues the more a risk is spread out, the more efficient it is to insure that risk. Thus, the broader the coverage, the less costly the policy proportionally. Dakota Access asserts the multistate policy with the larger pool of \$50,100,000 better serves Iowa than the proposed \$25,100,000 Iowa-only policy would, especially since the Iowa-only policy would not cover incidents arising in other states that may still impact Iowans or Iowa property.

Based upon a review of the current policies and the additional information provided by Dakota Access, it appears that the current policies provide better coverage for Iowans than the potential Iowa-only policies proposed by Dakota Access in response to the Board's order dated October 16, 2018. The current policies' higher aggregate limit of \$50,100,000 and coverage of incidents that may arise outside of Iowa but still impact Iowans and their property, are more beneficial than an Iowa-only policy with lower limits and that would not cover such events. Further, such benefits outweigh the risk that an incident in another state would exhaust the coverage limits prior to a separate incident impacting Iowa in the same coverage term.

The Board finds that Dakota Access is in substantial compliance with the Board's requirement from its "Final Decision and Order" that it maintain at least \$25,000,000 in general liability coverage. Dakota Access shall continue to file its insurance policies at least annually and as they are otherwise renewed or revised.

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Given that Dakota Access represents it should receive fully-executed policies within 60 days of renewal, the Board will expect Dakota Access to file such policies in a timelier manner in the future.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

1. The insurance policies filed by Dakota Access, LLC, on January 4, 2019, substantially comply with Ordering Clause 3(b) of the “Final Decision and Order” issued by the Utilities Board on March 10, 2016.

2. Dakota Access, LLC, shall continue to file such policies for review each time they are renewed. Such filings shall be due no later than 60 days after the expiration of the prior policy.

### **UTILITIES BOARD**

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Kelsie Vanderflute

Dated at Des Moines, Iowa, this 18<sup>th</sup> day of February, 2019.